Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

OCTOBER TERM 1978

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No. 78-36

VIRGINIA W. LUCOM, *Petitioner*

v.

DAVID L. REID, ETC., et al., *Respondents*

---

**On Appeal From the Supreme Court of Florida**

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Virginia W. Lucom prays that a Writ of Certiorari issue to review the decision of the Supreme Court of Florida entered in this case April 5, 1978.

### OPINIONS BELOW

The opinion of the Supreme Court of Florida (Appendix D, infra, page 12a) is a per curiam opinion. It affirms the decisions of the Florida Fourth District Court of Appeals (Appendix C, infra, page 9a) which on Interlocutory Appeal it reverses and re-

mands with instructions to dismiss the complaint which motion to dismiss had been denied (order is Appendix B, infra, page 8a) by the trial court judge. None of the foregoing have been published in the report.

## JURISDICTION

The order and judgment of the Supreme Court of Florida denying a rehearing of its per curiam order denying petition for certiorari was entered April 5, 1978 (Appendix E, infra page 13a) and this court's jurisdiction is founded on 28 USC 1257(3).

## QUESTIONS PRESENTED FOR REVIEW

1. Where the Attorney General of the State of Florida was granted a motion to dismiss petitioner's federal suit (Petition 77-89) regarding real estate tax assessments and related civil rights action on his representation that Florida provided a "plain, speedy and efficient remedy (that) may be had in the courts of" that state, thus invoking 28 USC 1341 which then bars federal intervention, upon subsequent suit in Florida state court can the statute which was represented as providing the relief precluding federal interference be reinterpreted so as to bar petitioner's state action?

2. On a motion to dismiss complaint alleging a void assessment is it denial of due process arbitrarily to enforce one condition precedent to suit while interpreting other sections in pari materia of the same statute (F.S.194.171) inapplicable to void assessment when statute makes no such distinction?



3. Can a twenty-fold disparity in real estate taxes between petitioner's unimproved land and abutting, adjoining and similarly zoned land be maintained despite the equal protection clause of the federal constitution?

4. On a motion to dismiss where federal constitutional denial of due process and equal protection are well pleaded with supporting factual allegations, can the state court completely ignore same?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL CONSTITUTIONAL

Amendment XIV . . . Section 1.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, *without due process of law; nor deny* to any person within its jurisdiction the *equal protection of the laws.* (Emphasis added.)

FEDERAL STATUTES

42 § 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties

> (3) If two or more persons in any State or Territory conspire or go in disguise on the highway or in the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under

the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right of privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 § 1986. Same; action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any



party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of the action has accrued.

28 § 1341. Taxes by States

The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State. June 25, 1948, c.646,62 Stat. 932.

FLORIDA STATUTES

§ 194.011 (2)

On or before approval of the assessment roll by the Department of Revenue, or upon order of the commission or court pursuant to s. 195.098, as appropriate, each property appraiser shall notify by first-class mail each person subject to real or tangible personal ad valorem taxes of the assessment of each taxable item of real property and tangible personal property, as the item appears on the assessment roll, which he proposes to increase from the previous year's assessment. The notice required above shall contain the dollar value of the prior year's assessment and the current assessed value as determined by the property appraiser. However, such notice shall not be required when such increased assessment is not greater than the value declared by the taxpayer on his return. Amended by Laws 1973, c.73-172, § 11 eff. July 1, 1973; Laws 1976, c.76-234, § 1.

§ 194.171 Circuit court to have original jurisdiction in tax cases

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after sixty days from the date of assessment being contested is certified for collection under section 193.122(2).

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) No action to contest a tax assessment may be maintained unless all taxes on the property which the taxpayer in good faith admits to be owing, including taxes assessed in years after the action is brought, are paid before they become delinquent.

(5) Pending actions to contest tax assessments shall be dismissed unless the taxpayer shall have paid to the collector all taxes on the property which he in good faith admits to be owing, including taxes assessed in years after the action is brought.

(6) The clerk of the circuit court shall, after deducting his statutory fee, pay to the collector all taxes which have been admitted to be due and have been deposited in the registry of the court in connection with pending actions to contest tax assessments. Formerly 194.151 and 194.171. Combined and amended by Laws 1972 c.72-239, § 1, eff. July 1, 1972; Laws 1974, c.74-234, § 6, eff. July 1, 1974.



## STATEMENT OF THE CASE

Being a case remanded by the Appellate Court with instructions to grant defendants' motion to dismiss, it is axiomatic that "For purposes of ruling on a motion to dismiss for want of standing (or jurisdiction) both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of complaining party; e.g. Jenkins v. McKeithem, 395 U.S. 411, 421-2 (1969) (parenthetic matter added)"; *Warth v. Seldin,* 422 U.S. 490 at 501-2.

Thus the indisputable facts of the case alleged in the complaint (Appendix A, infra, page 1a) are summarized as follows:

Petitioner, a citizen of Maryland, in 1952 bought about 545 acres of unimproved contiguous land in Palm Beach County, Florida, which was and still is unimproved and zoned "agriculture" and on which assessments and taxes rose slowly until 1973 when it was assessed at $490,000. Without the advance notice required by law (Florida Statutes 194.011(2)) and without change in zoning the assessment was increased 2231% or over twenty-two times to $10,933,400 for the year 1974, the year at issue, while all adjoining, abutting and similarly situated and zoned land remained at 1973 levels or about twenty-two times less. For 1975 the petitioner's said land was assessed at $3,298,020 or 70% less than for 1974 although there was no change in zoning or use.

Without compensation the bulk of petitioner's land for 1974 was officially classified as a park, which made it virtually unsaleable and nonuseable for any normal private use. Various county and state officials con-

spired to defraud petitioner by frustrating even any planning for the normal development of the property or public services for same.

There being no adequate state remedy, petitioner brought a suit for relief and damages in the U.S. District Court (Southern District, Florida) under 42 USC 1985 on which said court granted the same defendants' motion to dismiss because it related to assessments and the defendants' assured it that Florida provided a "plain, speedy and efficient remedy" thus invoking 28 USC 1341 as a bar to said suit. The federal district court's opinion which is based on the hoax of Florida's providing such a remedy was affirmed by the Fifth Circuit per curiam and resulted in Petition #77-89 being filed in the U.S. Supreme Court which has been denied, but as to which Petitioner is filing contemporaneously with the filing of this petition from the Florida courts proving said dismissal was based on a cruel misrepresentation, a motion for leave to file an attached motion for reconsideration of Petition #77-89.

Examination of the petitions in these related cases clearly establishes the federal suit's dismissal was based on the misrepresentation and deceit of the existence of a state remedy while the state action was dismissed by reinterpretation of a statute (from a traditional interpretation on which the Florida trial judge based his denial of defendants' motion to dismiss (opinion in Appendix B, infra, p. 8a, to the new appellate court version) all of which results in a complete denial of due process and equal protection as guaranteed by the federal constitution, and raises the most serious of the ethical standards of Florida officials' counsel including those of its Attorney General.



## FEDERAL ISSUES RAISED

The federal issues were raised in the petitioner's First Amended Complaint (Appendix A, infra, page 1a) more particularly in these paragraphs thereof:

> 9. Defendant DAVID L. REID, under color of law, intentionally, individually, grossly and arbitrarily discriminated against Plaintiff by increasing the assessment on Plaintiff's property in the Tax year 1974 some twenty two times over the Tax year 1973, despite the fact that there had been no improvement of the property or change in its use or zoning classification. Such an increase in the assessed value of Plaintiff's assessment contitutes a fraud and deprives Plaintiff of her right to equal protection of the laws and due process of law as guaranteed by the Constitution of the United States. Further, scores of parcels of abutting, adjoining or nearby property, with identical zoning and use are assessed for Tax year 1974 at about one-twentieth of that of Plaintiff's property. See Exhibit A attached, and incorporated herein by this reference.
>
> 17. The 1974 assessment on Plaintiff's property is (A) void as being made in violation of controlling law (B) so obviously and flagrantly excessive as to clearly impute, as a matter of law and fact to Defendant REID an intention to arbitrarily discriminate against the plaintiff (C) violative of Plaintiff's federal constitutional rights to equal protection of the laws and due process of law, and
>
> 22. Counsel for Defendant J. ED STRAUGHN, Executive Director of the Florida Department of Revenue represented to the local United States District Court as an inducement to the latter's dismissal of a comparable federal suit that this honorable Court provided a plain speedy and effi-

cient remedy for this Plaintiff in the circumstances of this case. Whereupon said federal suit was dismissed on said grounds.

The trial Florida judge denied the motion to dismiss the said complaint and entered an order accordingly (Appendix B, infra, page 8a) from which an Interlocutory Appeal was taken urging dismissal on a reinterpretation of Florida Statute 194.171 subsections (3) and (4) requiring strict compliance with same as a condition precedent to suit although the complaint alleged a void assessment and facts supporting said void status. The Fourth District Court of Appeal of the State of Florida reversed the trial court and remanded the case with directions to dismiss the complaint (Appendix A, infra, page 1a.), having failed and refused to consider the said federal issues raised. Petitioner appealed from said appellate order and also filed a petition for writ of certiorari and/or appeal with the Supreme Court of Florida which denied same without hearing and per curiam (App. D, infra, p. 12a).

The Florida courts ignored the federal issues although well pleaded, contrary to holding in *Brinkerhoff-Faris Trust v. Hill,* 281 U.S. 673, at 681 quoted infra.

**REASON FOR GRANTING**

(a) Mindful of the great national concern regarding the impact of real estate taxes (e.g. Proposition 13 in California) the court should exercise its general power of supervision by reviewing officials outrageous conduct in (1) zoning petitioner's land a "park" without compensation (2) increasing real estate tax by 2000% or twenty times without giving required



notice (3) effectively denying any private usage of the land and (4) procuring dismissal of civil rights—assessment suit based thereon by representing to the federal district court that 28 USC 1341 barred suit because "a plain, speedy and efficient remedy" was available in the state courts (all of which is set out in related case Petition 77-89 and in which petitioner is now filing motion for leave and rehearing) and then when state law suit is filed asking for and, on appeal, getting a reinterpretation of the very statute represented to the federal court as the state remedy, under which reinterpretation petitioner's state suit is barred.

(b) Mindful of the great national concern regarding the ethics and abuses by the legal profession this court should exercise its general power of supervision by reviewing these cases wherein the State's highest legal officer causes to be dismissed in the federal court petitioner's civil rights—assessment suit on his representation that his state provided an adequate remedy which invoked 28 USC 1341 barring suit (Petition 77-89) and then proceeding to insist that the said state relief statute be reinterpreted, and on appeal getting such reinterpretation whereby the promised state relief was illusory, as is clearly established by the treatment of the case giving rise to this petition.

(c) With real estate tax a burning national issue and with no factual disputes in this case, the court has a unique opportunity to review and set guidelines which have drifted away from the standard of both *true value* and *uniform* with insistence on the latter as set in *Sioux City v. Dakota County,* 260 U.S. 411 at 446 and has degenarated in Florida for example, to having no safeguards of uniformity and, in fact,

misinterpreting it to be applicable only if *all* other taxpayers in a county are assessed at a different rate. (*Southern Bell Telephone v. County of Dade,* 275 So2d 4 (Fla. 1973) and *Dade County v. Slater,* 194 So2d 587 (Fla. 1966)) but denying all relief for lack of uniformity unless it is the one exception in the entire taxing district. *Sproul v. Royal Palm Yacht Club, Inc.,* 143 So2d 900.

(d) The concept and pattern of a State court's ignoring well pleaded issues of federal due process and equal protection issues should be stopped and the preservation of the rights reaffirmed as stated in *Brinkerhoff-Faris Trust v. Hill,* 281 U.S. 673 at 681 as follows:

> But our decision in the case at bar is not based on the ground that there has been a retrospective denial of the existence of any right or a retroactive change in the law of remedies. We are not now concerned with the rights of the plaintiff on the merits, although it may be observed that the plaintiff's claim is one arising under the Federal Constitution and, consequently, one on which the opinion of the state court is not final; or with the accuracy of the state court's construction of the statute in either the Laclede Land & Improv. Co. Case or in the case at bar. Our present concern is solely with the question whether the plaintiff has been accorded due process in the primary sense,—whether it has had an oportunity to present its case and be heard in its support. Undoubtedly, the state court had the power to construe the statute dealing with the state tax commission; and to re-examine and overrule the Laclede Land & Improv. Co. Case. Neither of these matters raises a federal question; neither is subject to our review. But, while it is for the state courts to determine the adjective as well as the



> substantive law of the state, they must, in so doing, accord the parties due process of law. Whether acting through its judiciary or through its legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.
>
> * * *

Third. The court's finding of laches was predicated entirely on the plaintiff's failure to apply to the state tax commission. In view of what we have said, this ground is not sufficient independently to support the judgment. And, as the Supreme Court of Missouri did not decide whether the allegations of the plaintiff's bill were sustained by the proof, we do not inquire into the merits of the plaintiffs claim under the equal protection clause. The judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.

Reversed.

## CONCLUSION

The complaint properly alleged a cause of action sounding in fraud, conspiracy, void assessments and denial of due process and equal protection guaranteed by the federal constitution, and should not have been dismissed by hiding behind hypertechnical constructions or avoided by per curiam opinions. The national interest in these issues is now extremely high and certiorari should be granted preferably in connection with a review of Petition 77-89.

Respectfully submitted,

PAUL J. FOLEY
710 Pennsylvania Bldg.
Washington, D.C. 20004
*Attorney for Petitioner*

# APPENDIX

**APPENDIX A**

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT,
IN AND FOR PALM BEACH COUNTY, FLORIDA.
CIVIL DIVISION

Case No. 75-4093 CA (L) 01 B

VIRGINIA W. LUCOM, *Plaintiff*,

vs.

DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

J. ED STRAUGHN, as Executive Director, Florida Department of Revenue;

PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT;
CHARLES STAHMAN,
*Defendants*,

**First Amended Complaint**

1. This is an action to vacate the 1974 assessment of certain real property as void, to cancel tax certificates sold on same, and for other relief.

*The Parties*

2. The Plaintiff, VIRGINIA W. LUCOM, a citizen of the State of Maryland, brings this action as a private citizen over matter arising out of her ownership of about 545 acres of land situated in Palm Beach County, State of Florida.

3. Defendants,

(a) DAVID L. REID, as Property Appraiser (formerly Tax Assessor) of Palm Beach County, Florida;

(a) ALLEN C. CLARK, as Tax Collector of Palm Beach County, Florida;

(c) J. Ed Straughn, as Executive Director, Florida Department of Revenue;

(d) Palm Beach County Board of Tax Adjustment, in its official capacity.

(e) Charles H. Stahman, as Supervisor, Land Department Office of Property Appraiser (formerly Tax Assessor) Palm Beach County, Florida.

4. Plaintiff, during 1952, bought for about $55,000.00, approximately 545 of unimproved continguous real estate situated in Palm Beach County, and located west of Jog Road and both North and South of Forest Hill Blvd. in said county. The Plaintiff's land is now, and has always been unimproved, and has no utility service of any type. Said property is zoned "agriculture."

5. Plaintiff's property is contained in the nine parcels of land under the following Property Control Numbers used by the Property Appraiser, Defendant, David L. Reid:

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1. | 18 | 42 | 43 | 27 | 05 | 021 | 0150 |
| 2. | 18 | 42 | 43 | 27 | 05 | 014 | 0040 |
| 3. | 18 | 42 | 43 | 27 | 05 | 021 | 0070 |
| 4. | 18 | 42 | 43 | 27 | 05 | 014 | 0260 |
| 5. | 18 | 42 | 43 | 27 | 05 | 014 | 0370 |
| 6. | 18 | 42 | 43 | 27 | 05 | 021 | 0010 |
| 7. | 18 | 42 | 43 | 27 | 05 | 021 | 0390 |
| 8. | 18 | 42 | 43 | 27 | 05 | 014 | 0440 |
| 9. | 18 | 42 | 43 | 27 | 05 | 014 | 0032 |

6. For the Florida Property Assessment year 1973, with a tax day of January 1, 1973, Plaintiff's property was assessed at a value of approximately $490,000.00, or approximately $890.00 per acre.

7. For the Assessment year 1974, with a tax day of January 1, 1974, the Plaintiff's property was assessed at a value of $10,993,400.00, or approximately $20,000.00 per acre.



8. For the Assessment year 1975, with a tax day of January 1, 1975, the Plaintiff's property was assessed at a value of $3,298,020.00 or approximately $6,000.00 per acre, 30% of the assessment for 1974.

9. Defendant, David L. Reid, under color of law, intentionally, individually, grossly and arbitrarily discriminated against Plaintiff by increasing the assessment on Plaintiff's property in the Tax year 1974 some twenty two times over the Tax year 1974, despite the fact that there had been no improvement of the property or change in its use or zoning classification. Such an increase in the assessed value of Plaintiff's assessment constitutes a fraud and deprives Plaintiff of her right to equal protection of the laws and due process of law as guaranteed by the Constitution of the United States. Further, scores of parcels of abutting, adjoining or nearby property, with identical zoning and use are assessed for Tax year 1974 at about one-twentieth of that of Plaintiff's property. See Exhibit A attached, and incorporated herein by this reference.

10. Without compensation, present or prospective, most of Plaintiff's land was classified by the Palm Beach County Planning Board in its Land Use Map (see Exhibit B, pertinent parts annexed, and incorporated herein by this reference) for institutional use as a park. Said classification of Plaintiff's property has made it virtually unsaleable.

11. During the latter part of 1973 and during 1974, Defendant, Charles Stahman conspired with Defendant, David L. Reid and others presently unknown to Plaintiff to specially re-assess in a 'grossly discriminatory and outrageously unequal basis, as a class, only the newly annexed lands on the West side of the Town of Greenacres City, to which land the Plaintiff's land belongs, in furtherance of which plan, and under color of law, Defendant David L. Reid did raise the assessment of Plaintiff's property for 1974 by over twenty times, without notifying the Plaintiff by first class mail or otherwise notifying the Plaintiff, who

received no notice of increase in assessed valuation for the year 1974 as required by Florida Statute 194.011(2). The Plaintiff did not learn of same until she received her tax bill late in 1974. Further, Defendant, David L. Reid, in concert with public officials and their agents, known and unknown to Plaintiff conspired to deny Plaintiff any change in the zoning or use of her property and to impede, frustrate and prohibit any use of the Plaintiff's property for other than park or public institutional use as assigned it in the aforesaid Land Use Plan.

12. Despite the twenty fold increase in Plaintiff's assessment for 1974, the Town of Greenacres was not generally re-assessed for 1974 assessed value.

13. The Plaintiff's 1974 assessed value of about $20,000.00 per acre is about five to ten times that of acreage located in Greenacres and zoned R-2 (up to fifteen dwelling units per acre) and, land zoned for much higher economic use, and hence having higher market value, than land zoned "Agriculture"—one unit per every 5 acres—as is established by Non-Comparables Map, (Exhibit C, annexed hereto and incorporated herein by this reference) which shows the identifying assessment code, location, zoning and 1974 assessed value per acre of a score of parcels assessed far below that of the Plaintiff's property yet having zoning for a much higher use. There are no parcels so highly assessed as those in the aforesaid newly annexed properties West of Greenacres, to which Plaintiff's land belongs.

14. There is no other unimproved land zoned "Agriculture" in all of Palm Beach County which has been assessed at a value approaching 20,000.00 per acre for 1974.

15. Upon learning of the 1974 Tax Bill for her property, Plaintiff contacted the appraiser's office, providing it with maps (e.g. Exhibits A and C, hereto), legal arguments and citations with the further developments in furtherance of the aforesaid conspiracy



(a) Defendant Stahman prepared a report to cover up the conspiracy and attempt to justify same

(b) Defendant Reid, joined by new co-conspirators, decided to refuse corrective adjustments of the illegal assessments on the grounds that (A) it would not be politically expedient for him to do so and (B) on the feigned ground that he lacked authority (although it was called to his attention that subsequent to his certification of tax rolls in November, 1974, he issued over 1658 certificates of correction many of which were for incorrect values assessed).

(c) Defendant Reid denied Plaintiff a copy of, or access to the report identified in paragraph (a), supra.

(d) Defendant Reid refused to justify or explain to Plaintiff any basis on which her property was assessed for 1974.

(e) Defendant Reid then caused to be sent to Plaintiff letter attached as Exhibit D.

16. Plaintiff has tendered the amount she reasonably believes to be owing in good faith, as required by Section 194.71 Florida Statute. The tender of said amount has been rejected (see Exhibit E, annexed, and incorporated herein by this reference). Tender of same is made again herewith.

17. The 1974 assessment on Plaintiff's property is (A) void as being made in violation of controlling law (B) so obviously and flagrantly excessive as to clearly impute, as a matter of law and fact to Defendant Reid an intention to arbitrarily discriminate against the Plaintiff (C) violative of Plaintiff's federal constitutional rights to equal protection of the laws and due process of law.

18. Defendant Clark, has sold tax certificates for said properties on or about May 30, 1975. Each such certificate has been sold to Palm Beach County.

19. The Plaintiff's property produces no income.

20. Defendant STRAUGHN is hereby joined in this action for his failure to properly supervise Defendant REID, as required by law, and as principal revenue official of the State of Florida.

21. THE PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT is named as a party because it could have corrected this illegal assessment if Plaintiff had received timely notice of same so as to have timely filed for review by that Defendant.

22. Counsel for Defendant J. ED STRAUGHN, Executive Director of the Florida Department of Revenue represented to the local United States District Court as an inducement to the latter's dismissal of a comparable federal suit that this honorable Court provided a plain speedy and efficient remedy for this Plaintiff in the circumstance of this case. Whereupon said federal suit was dismissed on said grounds.

WHEREFORE, Plaintiff prays that this Court will

A. Declare void the 1974 assessment of Plaintiff's property, and vacate same.

B. Cancel tax sale certificates issued on said propertries

C. Declare due and owing as 1974 taxes on said properties that amount which Plaintiff has tendered herewith, and



D. Award Plaintiff such other relief as is just, including costs of these proceedings.

Respectfully submitted,

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Co-Counsel for Plaintiff

and

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By: .....
ANDREW I. FRIEDRICH,
Attorneys of Records for Plaintiff
Co-Counsel for Plaintiff

## APPENDIX B

[Caption omitted in printing]

**Order Denying Motions**

This cause was presented on Motions to Dismiss and Strike filed by the various Defendants and addressed to Plaintiff's Amended Complaint. Plaintiff now alleges that the 1974 assessment is so obviously and flagrantly excessive as to clearly impute to Defendant an intention to arbitrarily discriminate against her. This is the language set forth in *Lake Worth Towers, Inc.* v. *Gerstung, 262 So. 2d 1.* Facts are alleged. Whether they support this contention would be a matter for the Court to determine at trial. Plaintiff further alleges that she did not receive notice of her increased assessment for 1974. This as a question of fact to be determined at the trial. Only at trial can it be determined if the evidence is sufficient to overcome the presumption that the appraiser did his duty. It is thereupon,

ORDERED AND ADJUDGED that all pending motions filed by the Defendants are denied. Defendants are allowed 30 days from date hereof in which to answer.

DONE AND ORDERED this 23rd day of September, 1976.
Copy furnished counsel

CULVER SMITH
*Circuit Judge*

Copy furnished counsel



## APPENDIX C

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FOURTH DISTRICT JULY TERM 1977

Case No. 76-2205

DAVID L. REID, Property Appraiser of Palm Beach County;
ALLEN C. CLARK, Tax Collector of Palm Beach County;
J. ED STRAUGHN, Executive Director, Florida Department of Revenue;
PALM BEACH COUNTY BOARD OF TAX ADJUSTMENT,
*Appellants,*

v.

VIRGINIA LUCOM, *Appellee.*

Opinion filed August 2, 1977

Interlocutory appeal from the Circuit Court for Palm Beach County; Culver Smith, Judge.

Robert Lee Shapiro of Levy, Plisco, Perry & Shapiro, Palm Beach, for Appellant-David L. Reid.

Robert L. Shevin, Attorney General, and Harold F. X. Purnell, Assistant Attorney General, Tallahassee, for Appellant-J. Ed Straughn.

H. Michael Easley of Cone, Owen, Wagner, Nugent, Johnson & McKeown, and Larry Klein, West Palm Beach, for Appellant-Allen C. Clark.

R. William Rutter, Jr., County Attorney, and Charles P. Vitunac, Assistant County Attorney, West Palm Beach, for Appellant—Palm Beach County Board of Tax Adjustment.

Andrew Friedrich of Preefer & Friedrich, Lantana, and Paul J. Foley, Washington, D.C., for appellee.

DAUKSCH, J.

For our determination in this Interlocutory Appeal is an Order of the trial court denying the dismissal of a Complaint for equitable relief. Specifically the Plaintiff/Appellee seeks to have an assessment declared void alleging that the Property Appraiser, the Appellant here, arbitrarily discriminated against her in his assessment of her real property for the year 1974. Our jurisdiction is thru Fla.App.Rule 4.2 as this matter is one formerly cognizable in equity. *Dade County Land Development Corp. v. Dade County,* 157 So.2d 142 (Fla. 3d DCA 1963); Section 196.01; Florida Statutes (1967).

The Order denying the dismissal of the Complaint properly sets out that there are factual issues to be decided regarding the alleged improper assessment but as a part of the pleadings it is obvious that the Plaintiff failed to comply with Section 194.171(3) and (4), Florida Statutes (1975) in that she failed to tender to the Tax Collector the amount she admitted in good faith to be owing prior to instituting the lawsuit and before the payment of the taxes became delinquent. Therefore the court should have granted the Motion of the Tax Assessor to dismiss the Complaint. It was alleged that the Appellee tendered to the Appellant the amount she in good faith admitted owing on April 14, 1975. Under Section 197.016, Florida Statutes (1975) these taxes became delinquent on April 1, 1975. Section 194.171(3) and (4), Florida Statutes (1975) says that before an action to contest a tax assessment may be brought the taxpayer must pay to the collector the amount the taxpayer admits in good faith to be owing. The Tax Collector must issue a receipt for the payment and the taxpayer must file the receipt with his Complaint. The tender must be made before the taxes become delinquent. *Adler-Built Industries, Inc. v. Metropolitan Dade Co.,* 231 S.2d 197, 199 (Fla.1970); *Blake v. R. M. S. Holding Corp,* 341 So.2d 795 (Fla.3d DCA 1977); *Millstream Corp. v. Dade County,* 340



So.2d 1276 (Fla.3d DCA 1977); *Brooks v. Interlachen Lakes Estates, Inc.,* 332 So.2d 681 (Fla.1st DCA 1976).

Therefore the Order denying the dismissal of the Complaint is reversed and this cause is remanded with directions to dismiss the Complaint.

REVERSED and REMANDED with direction.

MAGER, C.J. and ALDERMAN, J., concur.

## APPENDIX D

SUPREME COURT OF FLORIDA

**Friday, February 17, 1978**

VIRGINIA LUCOM, *Petitioner,*

vs.

DAVID L. REID, etc., ET AL., *Respondents.*

CASE NO. 52,541

DISTRICT COURT OF APPEAL, FOURTH DISTRICT
76-2205

**This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.**

**OVERTON, C.J., ENGLAND, SUNDBERG, HATCHETT and KARL, JJ., concur**

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.
By: Judy Whittle
Deputy Clerk

TC
cc: Hon. Clyde Heath, Clerk
Hon. Culver Smith, Judge
Hon. John B. Dunkle, Clerk
Paul J. Foley, Esquire
Andrew I. Friedrich, Esquire
Charles P. Vitunac, Esquire
Christiansen, Jacknin & Myers
Cone, Owen, Wagner, Nugent,
Johnson & McKeown
Larry Klein, Esquire
L. M. Taylor, Esquire
H. Michael Easley, Esquire
Harold F. X. Purnell, Esquire



## APPENDIX E

[Caption omitted in printing]

**On consideration of the petition for rehearing filed by attorneys for petitioner, and reply thereto,**

**IT IS ORDERED by the Court that said petition be and the same is hereby denied.**

A True Copy

TEST:

Sid J. White

Clerk, Supreme Court
By: Dublin Causseaux
Deputy Clerk

TC
cc: Hon. Clyde L. Heath, Clerk
Hon. Culver Smith, Judge
Hon. John B. Dunkle, Clerk
Paul J. Foley, Esquire
Andrew I. Friedrich, Esquire
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Christiansen, Jacknin & Myers
Cone, Owen, Wagner, Nugent
Johnson & McKeown
Larry Klein, Esquire
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H. Michael Easley, Esquire
Harold F. X. Purnell, Esquire

Supreme Court, U. S.
FILED
AUG 2 1978
MICHAEL RODAK, JR., CLERK

# Supreme Court of the United States

OCTOBER TERM 1978

**No. 78-36**

VIRGINIA W. LUCOM,
*Petitioner,*

vs.

DAVID L. REID, ETC., et al.,
*Respondents.*

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

## BRIEF OF RESPONDENTS DAVID L. REID and ALLEN C. CLARK

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# Supreme Court of the United States

OCTOBER TERM 1978

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**No. 78-36**

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VIRGINIA W. LUCOM,
*Petitioner,*

vs.

DAVID L. REID, ETC., et al.,
*Respondents.*

---

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

---

## BRIEF OF RESPONDENTS DAVID L. REID and ALLEN C. CLARK

---

### STATEMENT OF THE CASE

Petitioner filed this action in state court to contest a tax assessment. The lower court entered an order denying defendants' motions to dismiss and defendants filed an interlocutory appeal to the Fourth District Court of Appeal. The appellate court reversed for the reason that the allegations of the complaint showed that the petitioner had failed to comply with Sections 194.171(3) and (4), Florida Statutes. The opinion of the Fourth District Court

of Appeal is contained at page 10(a) of petitioner's appendix.

Petitioner then filed a petition for certiorari in the Florida Supreme Court which was denied without opinion.

## ARGUMENT

Sections 194.171(3) and (4), Florida Statutes, are set forth on page 6 of the petition for writ of certiorari. The statute requires as a condition precedent to bringing an action for contesting a tax assessment:

> 1. That the taxpayer pay the collector so much of the tax which he admits in good faith to be owing, and
>
> 2. That such taxes be paid before they become delinquent.

Section 197.016(1), Florida Statutes, provides in part:

> "(1) Tax collectors are required to make all collections before April 1 following the year in which the taxes were assessed. All taxes collected shall be delivered forthwith to the governmental unit levying the tax. All unpaid taxes upon real and personal property shall become delinquent on April 1 of the year following the year in which the taxes were assessed. . . ."

As the Fourth District Court of Appeal pointed out in its opinion, the petitioner was complaining of the assessment against her for the year 1974, and that she tendered the taxes she in good faith admitted owing on April 14,



1975. This was of course after the date set by statute of April 1st.

The essence of the holding of the Fourth District Court of Appeal was since petitioner had not complied with the statutes, her action which was brought to contest the tax assessment should have been dismissed by the lower court.

We find it difficult to answer many of petitioner's contentions because they have nothing to do with the issues in this case. Petitioner injects Proposition 13 in California, the ethics of the attorneys involved against petitioner, civil rights, and suggests that real estate taxes are a "burning national issue". Petitioner also mentions another unsuccessful action which she filed in Federal Court which was dismissed and affirmed on appeal. Petitioner claims that Florida does not provide a plain, speedy and efficient remedy within the meaning of 28 U.S.C. 1341. The Fifth Circuit Court of Appeal expressly held that Florida Law does provide the taxpayer with an efficient remedy in *Carson* v. *City of Ft. Lauderdale,* 293 F.2d 337 (5th Cir. 1961). Petitioner claims that Florida does not adhere to the principles set forth by this Court in *Sioux City Bridge Co.* v. *Dakota County,* 260 U.S. 441, 43 S.Ct. 190, 67 L.Ed. 340. This argument is also incorrect. The Florida Supreme Court followed those principles in *Dade County* v. *Salter,* 194 So.2d 587 (Fla. 1966).

## CONCLUSION

Plainly and simply this petitioner failed to follow the Florida Statutes and timely tender those taxes which she admitted in good faith to be owing, which is a condition

precedent to bringing an action to contest a tax assessment in Florida. The petition for writ of certiorari should be denied.

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Supreme Court, U. S.
FILED
AUG 1 1978
MICHAEL RODAK, JR., CLERK

IN THE

UNITED STATES SUPREME COURT

OCTOBER TERM, 1978

---

No. 78-36

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, ETC., et al., Respondents

---

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

---

# BRIEF FOR RESPONDENT IN OPPOSITION

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ATTORNEY GENERAL

HAROLD F.X. PURNELL
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ATTORNEYS FOR RESPONDENT
DEPARTMENT OF REVENUE

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

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No. 78-36

---

VIRGINIA W. LUCOM, Petitioner

v.

DAVID L. REID, ETC., et al., Respondents

---

ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF FLORIDA

---

BRIEF OF RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals for the Fourth District of Florida is reported at 349 So.2d 661.

JURISDICTION

Respondents respectfully submit that jurisdiction in this Court does not lie

pursuant to 28 USC 1257.

## QUESTIONS PRESENTED

1. Whether the Petition for Writ of Certiorari is directed to an improper court and should be denied.

2. Whether the decision below passed on a substantial question or rested on adequate and independent state grounds.

3. Whether there was a reinterpretation of a state statute such that Petitioner was deprived of due process of law.

## STATEMENT

Petitioner originally filed this action in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida on October 29, 1975, seeking to challenge and vacate the 1974 assessment of certain real property



taxes.

Prior to initiating suit in the Florida courts, Petitioner had filed a similar suit in the U.S. District Court (Southern District, Florida) under 42 USC 1985. Chief Judge Fulton dismissed such suit pursuant to 28 USC 1341 because the "case is essentially one to enjoin, suspend or restrain the assessment,levy, or collection of a state tax," and "Florida law provides a plain, speedy and efficient remedy which can be had in state courts." The District Court's opinion was affirmed by the Fifth Circuit Court of Appeals in an unreported decision and this Court has previously denied a petition for a writ of certiorari involving such decision. Lucom v. Reid, Case No. 77-89, Cert. Den.

After being dismissed from Federal District Court but prior to the 5th Circuit

Court of Appeals' affirmance, the Plaintiff filed suit in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. The Defendants-Respondents moved to dismiss Plaintiff's complaint for her failure to timely and properly invoke the Court's jurisdiction pursuant to F.S. 194.171, which governs challenges to ad valorem tax assessments. The trial court denied Respondent's motions to dismiss, from which an interlocutory appeal was taken to the Fourth District Court of Appeals. On August 2, 1977, the Fourth District reversed the trial court and remanded with directions to dismiss the complaint because the Petitioner had failed to comply with the statutory prerequisites found in F.S. 194.171(3) and (4) for the institution of an ad valorem tax assessment challenge. The Florida Supreme Court



thereafter denied a Petition for Writ of Certiorari on February 17, 1978, and denied a Petition for Rehearing on April 5, 1978.

## I. THE PETITION FOR WRIT OF CERTIORARI IS DIRECTED TO AN IMPROPER COURT AND SHOULD BE DENIED.

The Petitioner alleges the jurisdiction of this Court lies in 28 USC 1257, which provides for review of "final judgments or decrees rendered by the highest court of a state in which a decision could be had." Where a state has intermediate appellate courts, as Florida does, and where review by the highest state court is discretionary (or a matter of right) such review must be sought in the highest state court prior to seeking review in this Court. Banks v. State of California, 395 US 708 (1969). Stratton v. Stratton, 239 US 55 (1915).

Where the highest state court declines to exercise the discretionary review, the judgment of the intermediate court becomes the judgment of "the highest court of the State" under 28 USC 1257. Western Union Telegraph Company v. Priester, 276 US 252 (1928); Hammerstein v. Superior Court of California, 341 U.S. 491 (1951); Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 US 157 (1954).

Since the Petitioner sought review of the decision of the Fourth District Court of Appeal in the Florida Supreme Court, which Court discretionarily declined to exercise its jurisdiction, this Petition for a Writ of Certiorari being directed to the Florida Supreme Court rather than the Fourth District Court of Appeals, is consequently not directed to



the proper court and is insufficient to invoke this Court's jurisdiction under 28 USC 1257.

## II. THE DECISION BELOW DID NOT PASS ON A SUBSTANTIAL FEDERAL QUESTION AND RESTS ON ADEQUATE AND INDEPENDENT STATE GROUNDS.

Irrespective of the fact that Petitioner has directed her Petition for Writ of Certiorari to the wrong court, the decision of the Fourth District Court of Appeals did not pass on a substantial federal question and rests on adequate and independent state grounds.

As stated in Durley v. Mayo, 351 US 277, 281 (1956):

> It is a well-established principle of this Court that before we will review a decision of a state court it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to the determination of the cause. (e.s.)

Cf. Brinkerhoff-Faris Trust v. Hill, 281 US 673, 680 (1930).

It is equally well-settled that this Court will refuse to review a state court decision that rests on adequate and independent state grounds whether substantial or procedural. Henry v. Mississippi, 379 US 443 (1965). However, when procedural defaults in a state court prevent the proper presentation and review of ones' federal rights, such procedural rules must serve a legitimate state interest. Henry, supra at 447.

In the case sub judice, by failure to follow the statutory prerequisites of Section 194.171(3) and (4), F.S., Petitioner failed to properly invoke the jurisdiction of the state court to review her tax assessment. Millstream Corporation v. Dade County, 340 So.2d 1276 (Fla. 3 DCA 1977); Blake v. R.M.S. Holding Corporation,



341 So.2d 795 (Fla. 3d DCA 1977). Therefore, it was by virtue of the Petitioner's own negligence that she was precluded from getting state court review of her federal claims.

The prerequisites of Section 194.171(3) and (4), F.S., to the filing of an action to contest a tax assessment are that the taxpayer pay the amount of tax which he admits in good faith to be owing and that the receipt for such payment be filed with the complaint. That such a procedural rule serves a legitimate state interest can hardly be denied, and, indeed, the Petitioner makes no such allegation. It is indispensable to county and local government that property taxes be assessed and collected. The state legislature is therefore necessarily vested with the power to enact necessary laws to secure the prompt collection of such a tax.

Rudisell v. City of Tampa, 9 So.2d 310 (Fla. 1942). Taxes are assessed for each individual year commensurate with the adoption of the governmental budgets to be funded by such taxes. To permit the filing of suits to contest tax assessments, which potentially last for numerous years, without the timely and proper payment of that portion of the tax liability not in dispute, would improperly and unnecessarily deprive local government of such needed revenues and throw the entire budgetary process of county and local governments into total disarray. As stated in Millstream Corporation v. Dade County, 340 So.2d 1276, 1278 (Fla. 3d DCA 1977):

> There is little doubt that the state may validly impose such a requirement. Were it not so, it would be an easy matter to avoid paying legitimate taxes simply by challenging one facet



> of an otherwise valid assessment.

The state, therefore, has a legitimate interest in the protection of the governmental budgetary process and the reliance on §194.171(3) and (4), F.S., is directly related to that legitimate interest.

## III. THERE WAS NO REINTERPRETATION OF A STATE STATUTE SUCH THAT PETITIONER WAS DEPRIVED OF DUE PROCESS OF LAW.

Petitioner relies on Brinkerdoff-Faris Trust v. Hill, 281 U.S. 673 (1930), for the proposition that it is a denial of due process of law for a state, acting through its judiciary, to reinterpret a statute at such a time so as to deny a person the opportunity to be heard and to present his case. Brinkerhoff, however, is easily distinguishable from the case sub judice. Brinkerhoff was denied relief from an alleged discriminatory tax assessment in a Missouri

trial court because he was guilty of laches in having not pursued his case before the county or state board of equalization pursuant to statutory law. The Supreme Court of Missouri held that such boards of equalization did not have the power to grant such relief, but the state tax commission did. The suit was then dismissed because Brinkerhoff was guilty of laches in not complaining to the state tax commission. The ruling of the Missouri Supreme Court, however, reversed a settled line of authority which held that the state tax commission did not have the power to review such claims. The taxpayer filed a petition for rehearing in the state supreme court alleging that the denial of relief based on the new interpretation violated the due process clause of the 14th Amendment.



The state supreme court denied the petition for rehearing. On review, this Court found that the decision of the Missouri Supreme Court, in effect, denied the taxpayer due process of law and reversed and remanded the case for further proceedings.

Unlike the taxpayer in Brinkerhoff, Petitioner has failed to assert in State Court that there was a reinterpretation of a state statute which has denied her due process of law. Rather, she has presented this claim for the first time in her Petition to this Court even though she had ample opportunity to raise such a claim in her petition for a writ of certiorari and petition for rehearing to the Florida Supreme Court. It is too late to present such a claim for the first time in a Petition for Writ of Certiorari to this Court where ample

opportunity existed in state court. Hiawassee River P. Co. v. Carolina-Tennessee P. Co., 252 U.S. 341 (1920).

In addition to improperly raising the Brinkerhoff due process argument, Petitioner's reliance on Brinkerhoff is unfounded in that there was no "midnight" reinterpretation of a state statute so as to produce a denial of due process of law. A clear interpretation of §196.01, F.S. (now incorporated in §194.171, F.S.), was given by the Florida Supreme Court in Adler-Built Industries, Inc. v. Metropolitan Dade County, 231 So.2d 197 (Fla. 1970), wherein it was stated at page 199:

> It is noteworthy that in the same amendatory act, Ch. 69-140, Acts of 1967, it amended §196.01 so as to require, as a jurisdictional prerequisite, the payment into court of the amount of tax admitted to be legal and due. (e.s.)



This continues to be the state law in Florida. Millstream Corporation v. Dade County, 340 So.2d 1276 (Fla. 3 DCA 1977); Blake v. R.M.S. Holding Corp., 341 So.2d 795 (Fla. 1 DCA 1977).

Petitioner alleges that the challenged assessment was excessive. This necessarily means that there was some tax that was admittedly legal and due and which should have been paid prior to initiating the challenge in state court.

Finally, the Florida Department of Revenue, represented by the Florida Attorney General, has consistently maintained in all proceedings that Florida does in fact provide a "plain, speedy and efficient remedy" under 28 U.S.C. 1341, a fact judicially upheld in Carson v. City of Ft. Lauderdale, 293 F.2d 337 (5th Cir. 1961). Said Respondent has also consistently maintained that it is incumbent on the taxpayer to timely and properly invoke such state procedures,

a position which has also been judicially upheld. Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

Petitioner's groundless and unprofessional assertions regarding the ethics of the Florida Attorney General's Office are refuted by the decisions in Carson and Henry, the elemental principle that jurisdiction of a court cannot be conferred by consent of the parties and by Chief Judge Fulton's Order of dismissal where the jurisdictional prerequisites of F.S. 194.171 were addressed:

> Plaintiff's contention that the sixty day period for filing suit, provided by Fla.Stat. 194.171(2), has expired, leaving her without an adequate state remedy, is without merit. The Fifty Circuit has previously rejected this contention, stating:
>
> > The expiration of time in which the state suit might have been brought does not result in the destruction of the plain and simple remedy principle specified in the Johnson Act. To hold otherwise would allow any disgruntled taxpayer to simply wait until the statute of limitations had run in the state courts and then bring suit in the federal court.
>
> Henry vs. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).



## CONCLUSION

For the above reasons, it is respectfully submitted that this Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT
DEPARTMENT OF REVENUE

# APPENDIX

## APPENDIX A

194.171 Circuit court to have original jurisdiction in tax cases.--

(1) The circuit courts have original jurisdiction at law of all matters relating to property taxation. Venue is in the county where the property is located.

(2) No action shall be brought to contest a tax assessment after 60 days from the date the assessment being contested is certified for collection under s. 193.122(2).

(3) Before a taxpayer may bring an action to contest a tax assessment, he shall pay to the collector the amount of the tax which he admits in good faith to be owing. The collector shall issue a receipt for the payment, and the taxpayer shall file the receipt with his complaint.

(4) No action to contest a tax assessment may be maintained unless all taxes on the property which the taxpayer in good faith admits to be owing, including taxes assessed in years after the action is brought, are paid before they become delinquent.

(5) Pending actions to contest tax assessments shall be dismissed unless the taxpayer shall have paid to the collector all taxes on the property which he in good faith admits to be owing, including taxes assessed in years after the action is brought.

(6) The clerk of the circuit court shall, after deducting his statutory fee, pay to the collector all taxes which have been admitted to be due and have been deposited in the registry of the court in connection with pending actions to contest tax assessments.



APPENDIX B

UNITED STATE DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

VIRGINIA W. LUCOM,

Plaintiff,

vs.

DAVID L. REID, etc., et al.,

Defendants.

NO. WPB-75-84-Civ-CF

ORDER

This cause came before the Court upon motions to dismiss filed by all defendants.

BACKGROUND

The plaintiff, a citizen of Maryland, owns approximately 545 acres of land situated in Palm Beach County, Florida. In 1973, the property was assessed at approximately $490,000.00, resulting in a property tax of some $13,000.00. In 1974, the property was reassessed at $10,993,400.00, resulting in a tax of $263,353.73. The increase in assessed taxes from 1973 to 1974 is thus some $250,000.00.

The plaintiff has brought this action under the civil rights statutes, alleging in five counts as follows: Count One, a conspiracy to defraud plaintiff by a grossly discriminatory assessment in violation of 42 U.S.C. §1985; Count Two, a conspiracy to effect a partial taking of plaintiff's property without compensation by arbitrarily classifying it as a park, in violation of 42 U.S.C. §1985; Count Three, that the comspiracy of the second count is joined by the conspiracy of the first count in common illegal objectives in violation of 42 U.S.C. §1985; Count Four, that defendant Reid, property appraiser of Palm Beach County, refuses to prevent further damages to plaintiff by issuing a Certificate of Correction in violation of 42 U.S.C. §1986; and Count Five, that the assessments are void as in violation of the federal constitutional guarantee of equal protection under the law. As relief, the plaintiff seeks to enjoin the tax sale of the property, the award of damages, declaratory relief and further injunctive relief.

THE APPLICABILITY OF 28 U.S.C. §1341, THE TAX INJUNCTION ACT

The defendants argue vigorously that the Tax Injunction Act of 1937, 28 U.S.C. §1341, bars the prosecution of this lawsuit in federal court. The plaintiff contends, equally strenuously, that this action is not primarily a suit



for tax injunction, but is rather a civil rights action seeking damages for an alleged conspiracy in violation of plaintiff's federal constitutional rights.

The Tax Injunction Act, 28 U.S.C. §1341, provides as follows:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

The inquiry as to the applicability of the above statute is two-pronged: the first question is whether the suit is one to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax; and the second question, if the first is answered in the affirmative, is whether there is a "plain, speedy and efficient remedy" in the state courts. Title 28 U.S.C. §1341 is a jurisdictional bar to the maintenance in federal courts of actions which come within its meaning; thus, if applicable, it will bar the prosecution of the instant suit and the defendants' motions to dismiss must be granted. Hargrave v. McKinney, 413 F.2d 320 (5th Cir. 1969).

In ascertaining whether this suit is one to "enjoin, suspend or restrain the assessment, levy of collection" of a state tax, it is appropriate to examine

the complaint to determine the essential nature of the claim. Beard v. Stephens, 377 F.2d 685 (5th Cir. 1967). It is clear that the mere allegation that the primary nature of a claim is a civil rights suit rather than a tax injunction suit will not prevent 28 U.S.C. §1341 from divesting the Court of jurisdiction. Hickmann v. Wujick, 488 F.2d 875 (2d Cir. 1973); Bland v. McHann, 463 F.2d 21 (5th Cir. 1972); Bussie v. Long, 383 F.2d 766 (5th Cir. 1967); Kimmey v. H.A. Berkheimer, 376 F.Supp. 49 (E.D. Pa. 1974); Evangelical Catholic Communion, Inc. v. Thomas, 373 F.Supp. 1342 (D. Ver. 1973).

The Bland v. McHann case, supra, involved a suit brought under the civil rights statutes by Negroes who claimed that the assessed valuation of their properties had been discriminatorily increased in retaliation for peaceful protests against alleged racial discrimination. In holding that 28 U.S.C. §1341 barred prosecution of the action in federal court, the Fifth Circuit stated:

> It is well established that §1341 is an explicit congressional limitation on the jurisdiction of the federal courts in cases which would enjoin, suspend or restrain state tax levy, assessment or collection. Taxpayers seek to circumvent §1341 by arguing that relief under



> §1983 is supplemental and is not limited to any requirement of exhaustion of state remedies. We do not disagree with the general rule that exhaustion is not required in §1983 cases; however, in this case §1983 collides full force with a specific congressional limitation on federal jurisdiction. In such circumstances we are convinced that §1341 must prevail.

Bland v. McHann, supra, p. 24. The Court went on to note that, where the state offers a plain, adequate and complete remedy, it is the duty of the federal court to remit the taxpayers to state court. Id, p. 26.

In the case of Kimmey v. Berkheimer, 376 F.Supp 49 (E.D. Pa. 1974), plaintiffs brought suit under the civil rights statutes, challenging the constitutionality of certain sections of the state tax law which authorized local tax collectors to distrain personal property of delinquent taxpayers prior to a hearing or an adjudication relative to liability for the taxes. The Court, citing with approval the Bland v. McHann case, supra, held that the statutory prohibition of §1341 cannot be avoided merely by framing the complaint as a request for declaratory relief, and further stated that "where jurisdiction is circumscribed by §1341, premising the Court's power on 42 U.S.C. §1983 and its jurisdictional analogue, 28 U.S.C. §1343,

will not compel a contrary result." Kimmey v. Berkheimer, supra, p. 53.

The Bland v. McHann and Kimmey v. Berkheimer cases are closely analogous to the instant action. In both cases, as in this one, plaintiffs brought their actions under the civil rights statutes. In both cases, the Courts held that where the civil rights statutes collide with §1341, §1341 must prevail. Although the plaintiff in the instant cause contends that the thrust of her complaint is a civil rights action, it is readily apparent upon examination of the complaint that the entire controversy centers around an allegedly void tax assessment, with both injunctive and declaratory relief sought. Calling the complaint a civil rights action cannot conceal the fact that this entire action is inextricably intangled with Florida's tax law. Where that is true, federal courts are statutorily mandated by §1341 to follow a policy of positive non-intervention with the state taxation processes. The plaintiff here seeks both injunctive relief against the county tax authorities, in addition to declaratory relief; this case is essentially one to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax. Clearly, the reasoning of the Bland v. McHann and Kimmey v. Berkheimer cases is applicable to this lawsuit, and the first requirement of the two-pronged §1341 test has been met.



It should be noted that, while the plaintiff seeks to avoid the §1341 jurisdictional bar by contending that §1341 cannot be a bar to an action seeking money damages, plaintiff's position is untenable. In the case of Evangelical Catholic Communion, Inc. v. Thomas, 373 F.Supp. 1342 (D. Ver. 1973), the Court in a well-reasoned opinion disposed of the identical issue by stating:

> Finally, the plaintiffs seek additional damages totaling $150,000.00. It is elementary that constitutional rights must be found to have been abridged in order for damages to be recovered in a civil rights action. Thus the plaintiffs in this action cannot recover damages without a determination by this court that the taxation of their Newbury property was effected in violation of their constitutional rights. If we were to make such a determination, we would, in effect, be issuing a declaratory judgment regarding the constitutionality of the tax levied on the plaintiffs. As the court is prohibited from issuing such a declaratory judgment, as indicated earlier, the court is also precluded as a matter of law from adjudicating the plaintiffs' damages claims.

Evangelical Catholic Communion, Inc. v. Thomas, supra, p. 1344. This reasoning is dispositive of the question of whether a prayer for damages will avoid the §1341 jurisdictional bar otherwise applicable to a lawsuit.

Having answered the first inquiry in the affirmative, the final §1341 question becomes whether there is a plain, speedy and efficient remedy in the state courts. This inquiry must likewise be answered affirmatively.

Chapter 194 of the Florida Statutes provides for "Administrative and Judicial Review of Property Taxes." Section 194.011 provides that notice of an assessment increase shall be given to each person subjected to the tax, and provides that anyone objecting to the assessment may file a petition opposing the assessment. Section 194.015 provides for a board of tax adjustment, and section 194.032 provides for the procedure to be followed by the board in hearing complaints. Section 194.042 provides for further administrative challenge to the assessment. Section 194.171 gives to the state Circuit Courts original jurisdiction of all matters at law pertaining to property taxation. Section 194.211 provides that an injunction may issue to restrain the sale of real property for any tax which appears to be contrary to law or equity. Clearly, Florida law provides for a plain, speedy and efficient remedy which can be had in state courts. Indeed, the Fifth Circuit has



previously held that Florida provides a "plain, speedy and efficient remedy" within meaning of §1341. Carson v. City of Ft. Lauderdale, 293 F.2d 337 (5th Cir. 1961).

Plaintiff's contention that the sixty day period for filing suit, provided by Fla. Stat. 194.171(2), has expired, leaving her without an adequate state remedy, is without merit. The Fifth Circuit has previously rejected this contention, stating:

> The expiration of time in which the state suit might have been brought does not result in the destruction of the plain and simple remedy principle specified in the Johnson Act. To hold otherwise would allow any disgruntled taxpayer to simply wait until the statute of limitations had run in the state courts and then bring suit in the federal court.

Henry v. Metropolitan Dade County, 329 F.2d 780 (5th Cir. 1964).

## CONCLUSION

From the foregoing discussion, it is clear that this is a suit to "enjoin, suspend or restrain the assessment, levy or collection" of a state tax and that a "plain, speedy and efficient remedy"

may be had in the state courts. Pursuant to 28 U.S.C. §1341, this Court is therefore divested of jurisdiction. It is thereupon

ORDERED and ADJUDGED that the defendants' motions to dismiss are granted.

DONE and ORDERED at West Palm Beach, Florida this 23 day of July, 1975.

s/ Charles B. Fulton
Chief Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Brief for Respondent in Opposition was sent by U.S. Mail this 31st day of July, 1978, to:

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